IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 10TH AUGUST 2006 / 19TH SRAVANA 1928

ST.Rev..No. 214 of 2006

STAT.494/2004 of KERALA AGRL. IT & STAT, ADDL.BENCH, KOTTAYAM
.....

REVISION PETITIONER/APPELLANT/ASSESSEE:

M/S. AMPURAN'S SPICES AND OLEORESIN,
VELLAPPALLY LANE, KOTTAYAM.

BY ADV. SRI.K.B. MOHAMEDKUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT/RESPONDENT/REVENUE:

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,
SECRETARIAT,THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER (SHRI V.V. ASOKAN)

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 10/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV. NO.214 OF 2006

Dated this the 10th day of August, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

The question raised is whether petitioner is entitled to exemption under Section 5(3) of the CST Act in respect of local sale of pepper for export against Form 18A issued by the exporter. The tribunal has rejected the claim on the ground that pepper being taxable at the point of last purchase in the State, claim of exemption on sale against Form 18A is not admissible. The tribunal has relied on the decision of the Supreme Court in State of Karnataka v. B.M. Ashraf And Co. (6 KTR 82) to disallow the claim. However, petitioner has put-forward a case before us that the Supreme Court decision does not apply because, green pepper purchased from outside Kerala, was brought to Kerala, processed and sold to exporters against Form 18A. Since the purchase is not from Kerala, petitioner has

no liability, is their case. However, we do not find such a contention being considered by the tribunal. On going through Grounds of Appeal, we find that petitioner has stated that purchases were made from within Kerala and from outside Kerala. If the petitioner can substantiate with documents that the goods purchased and brought from outside Kerala are sold to exporters, then, of course, tax cannot be levied on purchases which have been made from outside Kerala. Since the factual aspects of the claim are not verified by the tribunal, without which the issue cannot be decided, we feel one more opportunity can be given to petitioner to substantiate the claim before the tribunal. In order to avoid delay, we feel the tribunal can call for a report from the Assessing Officer who can forward it after verification of Accounts, transport documents, stock register, etc. and confirm whether part of the goods exported are bought from outside Kerala. We, therefore, dispose of the ST. Rev. by setting aside the order of the tribunal with a direction to

re-hear petitioner and dispose of the case after calling for report from the Assessing Officer, within a period of three months from the date of production of a copy of this Judgment.

C.N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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